

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE
Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
TOM FORESE
Commissioner
ANDY TOBIN
Commissioner

Arizona Corporation Commission

DOCKETED

NOV 02 2016

DOCKETED BY

R.A.

IN THE MATTER OF THE AGREEMENT
BETWEEN METROPOLITAN
TELECOMMUNICATIONS OF ARIZONA,
INC. AND QWEST CORPORATION dba
CENTURYLINK QC FOR THE PROVISION
OF CENTURYLINK LOCAL SERVICES
PLATFORM

DOCKET NOS. T-03991A-16-0400
T-01051B-16-0400

COMPLIANCE FILING OF
AMENDMENT UNDER PROTEST
AND WITH RESERVATION OF
RIGHTS

Pursuant to 47 U.S.C. § 252 (e)(1), the Rules of the Arizona Corporation Commission ("Commission") regarding filing of interconnection agreements and amendments to interconnection agreements, Qwest Corporation dba CenturyLink QC ("CenturyLink") files the attached Extension Amendment to CenturyLink Local Services Platform Agreement 2016 ("CLSP-2016") Service entered into between CenturyLink and Metropolitan Telecommunications of Arizona, Inc., for approval by the Commission. This Attached Amendment is effective as of January 1, 2017. The attached Amendment shall be referred to as the "Amendment to Commercial CLSP-2016 Agreement." As explained below, CenturyLink objects to being required to file the Amendment to Commercial CLSP-2016 Agreement for approval and likewise takes the position that the Commission lacks the authority to review, approve, amend, or reject the Amendment to Commercial CLSP-2016 Agreement, in whole or in part. CenturyLink is therefore filing the attached Amendment to Commercial CLSP-2016 Agreement under protest and with a reservation of rights as explained below.

1 CenturyLink's filing of the Amendment to Commercial CLSP-2016 Agreement under
2 protest is the result of the order entered by the Commission on September 9, 2005 in Docket
3 Nos. T-01051B-04-0540 and T-03574A-04-0540 (the "MCI Filing Order"). In that order, the
4 Commission denied CenturyLink's Motion to Dismiss the Agreement Filing of MCImetro
5 Access Transmission Services, L.L.C. ("MCI"). In the MCI Filing Order, the Commission
6 concluded that the Commercial QPP Agreement between CenturyLink and MCI is subject to the
7 Commission's jurisdiction and that the Telecommunications Act of 1996 ("the Act") required
8 CenturyLink and MCImetro to file the agreement and seek the Commission's approval of it.

9 The Amendment to Commercial CLSP-2016 Agreement filed by CenturyLink in this
10 docket, with the exception of the name of the party with whom CenturyLink is contracting to
11 provide CLSP Service, addresses the same services as those in the Commercial QPP™
12 Agreement filed by MCI in Docket Nos. T-01051B-04-0540 and T-03574A-04-0540.

13 Pursuant to the Federal Communications Commission's rulings in the *Triennial Review*
14 *Order*¹ and the *Triennial Review Remand Order*,² incumbent local exchange carriers ("ILECs")
15 like CenturyLink are no longer required to provide mass market switching, shared transport, and
16 certain other services under Section 251 of the Act.³ Notwithstanding these rulings, CenturyLink
17 has voluntarily determined that it will provide mass market switching and shared transport
18 services under the CLSP-2016 Agreement. In *Qwest Corporation v. Arizona Corporation*
19 *Commission* (the "*Covad Arbitration Decision*"), the United States District Court for the District
20 of Arizona recently ruled that the Commission does not have the authority to require
21 CenturyLink to include in its arbitrated interconnection agreements obligations to provide
22 network elements that, per rulings of the Federal Communications Commission, CenturyLink is
23

24 ¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report
25 and Order, 17 FCC Rcd 16978 (2003).

26 ² *In the Matter of Unbundled Access to Network Elements and Review of Section 251 Unbundling Obligations*,
Order on Remand, 20 FCC Rcd 2533 (2005).

³ 47 U.S.C. § 251.

1 not required to provide under Section 251.⁴ This ruling recognizes that while Congress gave
2 state commissions authority to impose and enforce requirements involving the unbundled
3 network elements and services included in Section 251, it specifically did not grant state
4 authority over the elements and services that the FCC has removed from Section 251.⁵ Thus, the
5 Amendment to CLSP-2016 Agreement, which does not include any services required under
6 Section 251, is not subject to review by this Commission. Further, that decision is consistent
7 with those of multiple other federal courts that have ruled that states do not have authority under
8 the Act to impose requirements on services and elements that the FCC has removed from
9 Section 251.⁶

10 Therefore, subject to the foregoing, CenturyLink hereby files the attached Amendment to
11 Commercial CLSP-2016 Agreement under protest and, likewise under protest, seeks the
12 Commission's approval of the Amendment under Section 252(e)(1) of the Act.

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19 ⁴ 496 F. Supp. 2d 1069, 1077 (D. Ariz. 2007), *aff'd*, *Qwest Corp. v. Ariz. Corp. Comm'n*, 567 F.3d 1109 (9th Cir. 2009).

20 ⁵ *Id.* at 1076-78.

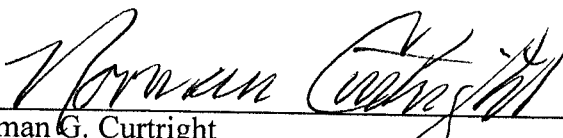
21 ⁶ See e.g. *Verizon New England v. Me. Pub. Utils. Comm'n*, Nos. 06-2151, 06-2429, 2007 WL 2509863 (1st Cir. Sept. 6, 2007); *DIECA Commc'ns, Inc. v. Fla. Pub. Servs. Comm'n*, 447 F. Supp. 2d 1281 (N.D. Fla. 2006);
22 *Bellsouth Telecomms., Inc. v. Ky. Pub. Serv. Comm'n*, No. 06-65-KKC, 2007 WL 2736544 (E.D. Ky. Sept. 18, 2007); *Michigan Bell Tel. Co. v. Lark*, No. 06-11982, 2007 WL 2868633 (E.D. Mich. Sept. 26, 2007); *Southwestern Bell Tel., L.P. v. Mo. Pub. Serv. Comm'n*, 461 F. Supp. 2d 1055 (E.D. Mo. 2006).

23 In *Qwest Corporation v. Public Utilities Commission of Colorado*, 479 F.3d 1184 (10th Cir. 2007), the 10th Circuit
24 ruled that the Colorado and Utah Commissions had authority to review and approve a Qwest commercial agreement
25 known as "Qwest Platform Plus" under Section 252(e)(1). However, Qwest submits that the decision is incorrect
26 because it concludes erroneously that the commercial agreement at issue in that case related to the duties in
Section 251(b) and (c) involving unbundled network elements and interconnection. The mass market switching and
shared transport that Qwest provides under the agreement at issue here is not provided pursuant to either
Section 251(b) or (c) and therefore does not relate to any of the duties in that section. As such, the agreement is not
an "interconnection agreement" subject to this Commission's review and approval under Section 252(e)(1).

1 RESPECTFULLY SUBMITTED this 2nd day of November, 2016.

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**QWEST CORPORATION dba
CENTURYLINK QC**

By: 
Norman G. Curtright
Associate General Counsel, CenturyLink
20 E. Thomas Rd., 1st Floor
Phoenix, Arizona 85012

Attorney for Qwest Corporation dba
CenturyLink QC

ORIGINAL and 13 copies of the foregoing
filed this 2nd day of November, 2016 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

COPY of the foregoing mailed
this same day to:

Andoni Economou
COO and EVP
Metropolitan Telecommunications
55 Water Street, 31st Floor
New York, NY 10041

Joseph Farano
Corporate Counsel
Metropolitan Telecommunications
55 Water Street, 31st Floor
New York, NY 10041

By: 
Reed Peterson

**EXTENSION AMENDMENT TO
CENTURYLINK™ LOCAL SERVICES PLATFORM ("CLSP™") AGREEMENT**

This amendment ("Amendment"), by and between Qwest Corporation dba CenturyLink QC ("CenturyLink"), a Colorado corporation, and Metropolitan Telecommunications of Arizona, Inc. ("CLEC"), a Delaware corporation, amends the CenturyLink™ Local Services Platform ("CLSP™") Agreement (formerly known as "Qwest Local Services Platform™" ("QLSP™") Agreement") between the Parties.

WHEREAS, the Parties entered into a Qwest Local Services Platform ("QLSP™") Agreement (now referred to as a CenturyLink™ Local Services Platform ("CLSP™") Agreement), (the "Agreement"); and

WHEREAS, the terms "CenturyLink" and "CLSP" in this Amendment shall be used in place of, and interchangeably with, the terms "Qwest" and "QLSP", respectively, in the Agreement; and

WHEREAS, the Parties agree to amend the Agreement under the terms and conditions contained herein.

NOW THEREFORE, in consideration of the foregoing and the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Amendment Terms

Section 2 of the Agreement will be replaced in its entirety as follows:

2. **Effective Date.** This Amendment shall be deemed effective on January 1, 2017.

Section 3 of the Agreement will be replaced in its entirety as follows:

3. **Term.** The term of this Agreement begins on the Effective Date and continues through December 31, 2019. Upon expiration, this Agreement will continue on a month-to-month basis until it is terminated by either Party, with at least ninety (90) Days prior written notice, pursuant to Section 22 of the Agreement, or replaced by a successor agreement.

Qwest Corporation dba CenturyLink QC:	Metropolitan Telecommunications of Arizona, Inc.:
DocuSigned by: <i>Diane Roth</i>	DocuSigned by: <i>Andoni Economou</i>
By: <u>768DEF6A14DA455...</u>	By: <u>83E3E1FBB2204E5</u>
Name: <u>Diane Roth</u>	Name: <u>Andoni Economou</u>
Title: <u>Director – Wholesale</u>	Title: <u>COO/ EVP</u>
Date: <u>10/31/2016</u>	Date: <u>10/31/2016</u>